

§ 239.6

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Federal taxes and is not subject to withholding.

§ 239.6 Eligibility.

(a) *Eligibility by Category.* Those eligible for benefits under the Expanded HAP include the following categories of persons:

(1) *Wounded, Injured, or Ill.* (i) Members of the Armed Forces:

(A) Who receive a disability rating of 30% or more for an unfitting condition (using the Department of Veterans Affairs Schedule for Ratings Disabilities), or who are eligible for Service member's Group Life Insurance Traumatic Injury Protection Program, or whose treating physician (in a grade of at least captain in the Navy or Coast Guard or colonel in Army, Marine Corps, or Air Force) certifies that the member is likely, by a preponderance of the evidence, to receive a disability rating of 30 percent or more for an unfitting condition (using the Department of Veterans Affairs Schedule for Ratings Disabilities) for wounds, injuries, or illness incurred in the line of duty while deployed, on or after September 11, 2001, and

(B) Who are reassigned in furtherance of medical treatment or rehabilitation, or due to retirement in connection with such disability, and

(C) Who need to market the primary residence for sale due to the wound, injury, or illness. (For example, the need to be closer to a hospital or a family member caregiver or the need to find work more accommodating to the disability.)

(ii) Civilian employees of DoD or the United States Coast Guard (excluding temporary employees or contractors, but including employees of non-appropriated fund instrumentalities):

(A) Who suffer a wound, injury, or illness (not due to own misconduct), on or after September 11, 2001, in the performance of duties while forward deployed in support of the Armed Forces, whose treating physician provides written documentation that the individual, by a preponderance of the evidence, meets the criteria for a disability rating of 30 percent or more. As described in paragraph (a)(1) of this section, this documentation will be certified by a physician in the grade of at least cap-

tain in the Navy or Coast Guard or colonel in Army, Marine Corps, or Air Force.

(B) Who relocate from their primary residence in furtherance of medical treatment, rehabilitation, or due to medical retirement resulting from the wound, injury, or illness, and

(C) Who need to market the primary residence for sale due to the wound, injury, or illness. (For example, the need to be closer to a hospital or a family member caregiver or the need to find work more accommodating to the disability.)

(2) *Surviving spouse.* The surviving spouse of a Service member or of a civilian employee:

(i) Whose spouse dies as the result of a wound, injury, or illness incurred in the line of duty while deployed (or forward deployed for civilian employees) on or after September 11, 2001, and

(ii) Who relocates from the member's or civilian employee's primary residence within two years of the death of spouse.

(3) *BRAC 2005 members and civilian employees.* Members of the Armed Forces and civilian employees of the Department of Defense and the United States Coast Guard (not including temporary employees or contractors) and employees of non-appropriated fund instrumentalities meeting the assignment requirements of § 239.6(b)(4)(i)(A) of this part and who have not previously received HAP benefit payments:

(i) Whose position is eliminated or transferred because of the realignment or closure; and

(ii) Who accepts employment or is required to relocate because of a transfer beyond the normal commuting distance from the primary residence (50 miles). The new residence must be within 50 miles of the new duty station.

(4) *Permanently reassigned members of the Armed Forces.* Members who have not previously received HAP benefit payments and who are reassigned under permanent PCS orders:

(i) Dated between February 1, 2006, and September 30, 2012 (subject to availability of funds),

(ii) To a new duty station or home port outside a 50-mile radius of the

member's former duty station or home port.

(b) *Eligibility based on economic impact, timing, price, orders, and submission of application.* (1) *Minimum economic impact.* (i) BRAC 2005 Members and Civilian Employees as well as permanently reassigned members of the Armed Forces whose primary residence have suffered at least a 10 percent personal home value loss from the date of purchase to date of sale. Market value of the home will be verified by the USACE.

(ii) Applicants qualifying as Wounded, Injured, or Ill or as surviving spouse do not need to show minimum economic impact.

(2) *Timing of purchase and sale.* (i) BRAC 2005 Members and Civilian Employees must have been the owner-occupant of their primary residence before May 13, 2005, the date of the BRAC 2005 announcement or have vacated the owned residence as a result of being ordered into on-post housing after November 13, 2004. An owner-occupant is someone who has both purchased and resides in the residence.

(ii) Permanently reassigned members of the Armed Forces must have purchased their primary residence before July 1, 2006.

(iii) Wounded, injured, or ill members and employees and Surviving Spouses are eligible for compensation without respect to the date of purchase.

(iv) BRAC 2005 Members and Civilian employees and permanently reassigned members must have sold their primary residence between July 1, 2006 and September 30, 2012.

(3) *Maximum home prior fair market value and eligible mortgage.* When calculating benefits, both the PFMV and the eligible mortgage will be capped at \$729,750.

(4) *Date of assignment; report date; basis for relocation.* (i) *Date of assignment, report date.* (A) BRAC 2005 Members and Civilian Employees must have been assigned to an installation or unit identified for closure or realignment under the 2005 round of the Base Realignment and Closure Act of 1990 on May 13, 2005; transferred from such an installation or unit, or employment terminated as a result of a reduction in force, after November 13, 2004; or trans-

ferred from such an installation or activity on an overseas tour after May 13, 2002. BRAC 2005 Members transferred from such an installation or activity after May 13, 2005, are also eligible if, in connection with that transfer the member was informed of a future, programmed reassignment to the installation.

(B) For initial implementation, permanently reassigned members of the Armed Forces must have received qualifying orders to relocate dated between February 1, 2006, and September 30, 2010. These dates may be extended to September 30, 2012, at the discretion of the DUSD(I&E) based on availability of funds.

(ii) *Basis for relocation:* Permanently reassigned members of the Armed Forces who are reassigned or who otherwise relocate for the following reasons are not eligible for Expanded HAP benefits:

(A) Members who voluntarily retire prior to reaching their mandatory retirement date.

(B) Members who are a new accession into the Armed Forces or who are otherwise entering active duty.

(C) Members who are voluntarily separated or discharged.

(D) Members whose separation or discharge is characterized as less than honorable.

(E) Members who request and receive voluntary release from active duty (REFRAD).

(F) Members who are REFRAD for misconduct or poor performance.

(c) *Applications will be processed according to eligibility category in the following order:* (1) *Wounded, injured, and ill.* Within this category, applications will generally be processed in chronological order of the wound, injury, or illness.

(2) *Surviving spouses.* Within this category, applications will generally be processed in chronological order of the date of death of the member or employee.

(3) *BRAC 2005 members and civilian employees.* Within this category, applications will generally be processed in chronological order of the date of job elimination.

(4) *Permanently reassigned members of the Armed Forces.* Within this category,

applications will generally be processed beginning with the earliest report-not-later-than date of PCS orders.

§ 239.7 Responsibilities.

(a) The DUSD(I&E), under the authority, direction, and control of the USD(AT&L), shall, in relation to the Expanded HAP:

(1) Prescribe and monitor administrative and operational policies and procedures.

(2) Determine applicable personnel benefits and policies, in coordination with the Under Secretary of Defense (Comptroller) and the Under Secretary of Defense for Personnel and Readiness.

(3) Serve as senior appeals authority for appeals submitted by applicants.

(b) The Under Secretary of Defense (Comptroller) shall, in relation to the Expanded HAP:

(1) Implement policies and prescribe procedures for financial operations.

(2) Review and approve financial plans and budgets.

(3) Issue financing and obligation authorities.

(4) Administer the DoD Homeowners Assistance Fund.

(c) The Deputy Assistant Secretary of the Army for Installations and Housing (DASA(I&H)), subject to review by the DUSD(I&E), as the DoD Executive Agent for administering, managing, and executing the HAP, shall:

(1) Establish detailed policies and procedures for execution of the program.

(2) Maintain necessary records, prepare reports, and conduct audits.

(3) Publish regulations and forms.

(4) Disseminate information on the program.

(5) Forward copies of completed responses to congressional inquiries and appeals to the DUSD(I&E) for information.

(6) Serve as the initial approval authority for HAP appeals. The DASA(I&H) may approve appeals and shall forward recommendations for Expanded HAP denial to the DUSD(I&E) for decision.

(d) The Heads of the DoD Components and the Commandant of the Coast Guard, by agreement of the Secretary of Homeland Security, shall:

(1) Designate at least one representative at the headquarters level to work with DASA(I&H) and HQUSACE HAP offices.

(2) Require each installation to establish a liaison with the nearest HAP field office to obtain guidance or assistance on the HAP.

(3) Supply the HQUSACE HAP office a copy of any internal regulation, instruction, or guidance published relative to the Expanded HAP program.

(4) Disseminate information on the Expanded HAP and, upon request, supply HAP field offices with data pertaining to the Expanded HAP.

(e) HQUSACE. (1) *Real Estate Community of Practice (CEMP-CR)*. The Director of Real Estate, acting for the Chief of Engineers, has been delegated authority and responsibility for the execution of HAP. CEMP-CR, as the central office for HAP, is responsible for the following:

(i) Supervision, interagency coordination, development of procedures, policy guidance, and processing of appeals forwarded from the districts and HQUSACE Major Subordinate Commands (MSC).

(ii) Maintaining an Expanded HAP central office and Expanded HAP field offices.

(iii) Processing appeals from the MSC where applicant agreement cannot be reached. Such appeals will be forwarded, in turn, to DASA(I&H) for consideration.

(2) *Districts*. Districts designated by the Director of Real Estate, and their Chiefs of Real Estate, have been delegated the authority to administer, manage, and execute the HAP on behalf of all applicants. Districts (as identified in § 239.9 of this part) are responsible for the following:

(i) Accepting applications (DD Form 1607) for HAP and Expanded HAP benefits.

(ii) Determining the eligibility of each applicant for Expanded HAP assistance using the criterion established by the DUSD(I&E).

(iii) Determining and advising each applicant on the most appropriate type of assistance.